

to get a result that is fair to both parties.

I say to my colleague from Washington, for us to decide we have better judgment than the State courts that administer the cases that are before them, I think, is a huge mistake. We talk about micromanagement. When we start deciding legal fees in this Senate Chamber, we are making a mistake. We do need to be worried about windfalls to attorneys; absolutely we do. That is why arbitration panels were included in the legislation that came out of the Commerce Committee on a 19-to-1 bipartisan vote. I yield the floor.

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. I thank the Chair. Mr. President, my colleague from North Dakota has spoken to the arbitration provision in the legislation. I shall not do so. I just want to present a Minnesota perspective for just a moment.

I come from a State where we just went through a very important trial. The lawyers in my State, working with the attorney general, were able to unearth 33 million pages of documents—33 million pages of documents. This was during a discovery process that went from August 1994 to the end of 1997. Many of those documents have had an enormous impact, not just on the settlement in Minnesota, which was a very important settlement, but also directly on the debate in the U.S. Congress. Thirty-nine thousand pages of those documents were ordered produced by the Minnesota judge and were ultimately subpoenaed by the House of Representatives and made public on the Internet.

What I want to do is speak to the part of this amendment that concerns me the most. I have had some discussion with my colleague from Alabama, and I have said to him, "Why don't you, in fact, not make this retroactive," when he had his similar amendments on the floor, because I don't think we should be taking action here that reaches back to the Minnesota settlement, which has already been entered into and has been declared final by the court. We already have an arrangement between the State and the Attorney General and the lawyers who represented our State. Congress should not disturb that.

I think the amendment of my colleague from the State of Washington has a different weakness and that is its lack of evenhandedness. What I want to see at a bare minimum is to have the same kind of caps or limits put on those attorneys representing the tobacco companies. I say to colleagues, when you vote on this amendment, the thing you ought to fasten your attention on is that we don't have the same kind of ceiling, the same kind of caps put on fees that go to lawyers representing the tobacco companies. I see

nothing here that does that, in which case I would argue that we are hardly talking about a level playing field.

I think the problem with the amendment is that it just simply lacks balance. I cannot support an amendment that puts caps on the fees of plaintiffs' attorneys representing consumers and representing the attorney general from a State, but at the same time puts no cap at all on the fees of attorneys hired by tobacco companies or other big corporations with their corporate lawyers working with these companies, but there is no cap on the fees. That just simply makes no sense to me from a kind of elementary standard of fairness, and that is why I think the amendment is fatally flawed.

HOMOSEXUALITY AND THE NOMINATION OF JAMES HORMEL

Mr. WELLSTONE. Mr. President, before I give up my time on the floor, I just want to take 1 minute also to mention another matter that has something to do with fairness. I am going to do this with a tremendous amount of sensitivity, but I just want to take a minute to mention this.

There were a number of newspaper articles today which report on the majority leader's comments about homosexuality. I ask unanimous consent they be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the New York Times, June 16, 1998]

LOTT SAYS HOMOSEXUALITY IS A SIN AND
COMPARES IT TO ALCOHOLISM

(By Alison Mitchell)

WASHINGTON, June 15—In an interview about his personal beliefs, Senator Trent Lott, the majority leader, told a conservative talk show host today that homosexuality is a sin and then compared it to such personal problems as alcoholism, kleptomania and "sex addiction."

The Mississippi Republican made his remarks in a 40-minute taped interview conducted by Armstrong Williams for the America's Voice network, a cable television network. The interview—part of a series on some of the nation's political leaders—was timed for Father's Day and is scheduled for broadcasting over the weekend or next week.

Mr. Lott and Mr. Williams explored a range of social topics from Mr. Lott's thoughts on disciplining children (he said that on occasion he used a belt) to his opposition to abortion to his views on the role of men and women in marriage. He described his childhood growing up in Mississippi in the late 1950's and early 1960's as a "good time for America."

Mr. Lott has made his views on homosexuality known in the past, speaking out in 1996 against a bill, narrowly defeated by the Senate, that would have banned discrimination against homosexuals in the work place. At the time he called the legislation "part of a larger and more audacious effort to make the public accept behavior that most Americans consider dangerous, unhealthy or just plain wrong."

Asked today by Mr. Williams whether homosexuality is a sin, Mr. Lott replied, "Yes, it is." He added that "in America right now there's an element that wants to make that alternative life style acceptable."

Mr. Lott said: "You still love that person and you should not try to mistreat them or treat them as outcasts. You should try to show them a way to deal with that." He said his own father had had a problem with alcoholism, adding: "Others have a sex addiction or are kleptomaniacs. There are all kinds of problems and addictions and difficulties and experiences of this kind that are wrong. But you should try to work with that person to learn to control that problem."

With the investigation of President Clinton's connection to a former White House intern as a backdrop, Mr. Lott also spoke about his marriage to his wife, Tricia. He said he had never been unfaithful in their 34 years of marriage "because I love her and because I believe that's wrong."

Asked if he was ever tempted, he allowed: "Sure I was. I'm a human being." But he said he took great care to insure that his behavior was beyond reproach. When he travels in his Mississippi district with a woman who works for him as a field worker, he said, "I would never get in a situation where it was just the two of us in a car." He said he took that precaution "because just the appearance bothered me."

Mr. Lott said his opposition to abortion was taught to him by his mother. He remembered coming home from high school and telling his mother he thought abortion might be acceptable under certain conditions, only to see her drop a dish towel and burst into tears. "She started crying and said, 'If I have raised you to have no moral respect for human life then I have failed,'" he said.

Mr. Lott, who is a Southern Baptist, stepped carefully when asked about the Southern Baptist Convention's declaration that a woman should "submit herself graciously" to her husband's leadership. He said that he felt "very strongly" about his faith, but said he would speak of marriage roles "in different terms." Spouses, he said, should "serve each other."

[From the Washington Post, June 16, 1998]

LOTT: GAYS NEED HELP "TO DEAL WITH THAT PROBLEM"

Senate Majority Leader Trent Lott (R-Miss.) said yesterday that he believes homosexuality is a sin and that gay people should be assisted in dealing with it "just like alcohol...or sex addiction...or kleptomaniac."

While taping an interview for "The Armstrong Williams Show," a cable television program, Williams asked Lott if he believed homosexuality is a sin. The senator replied, "Yeah, it is."

Lott added: "You should still love that person. You should not try to mistreat them, or treat them as outcasts. You should try to show them a way to deal with that problem, just like alcohol...or sex addiction...or kleptomaniacs."

"There are all kinds of problems, addictions, difficulties, experiences of things that are wrong, but you should try to work with that person to learn to control that problem," he said.

Lott's comments show "how the extreme right wing has a stranglehold on the leadership" of Congress, said Winnie Stachelberg, political director of the Human Rights Campaign, the nation's biggest gay political organization. Stachelberg also said Lott is "out of step" with scientific studies of the causes of homosexuality.

Some groups believe homosexuality is a chosen lifestyle and have searched for a "cure" for being gay. Many in the gay community, however, insist that homosexuality is a matter of biology.

"The medical community, the mental health community for 20 years now has

known homosexuality is not a disorder," Stachelberg said.

Lott spokeswoman Susan Irby declined to comment on Stachelberg's remarks.

Williams, the television program host, said the interview probably will be aired this week.

Mr. WELLSTONE. Mr. President, the majority leader, when asked whether or not homosexuality is a sin, stated, "Yes, it is." He added that "in America right now there's an element that wants to make that alternative lifestyle acceptable." Then he went on to say, "Others have a sex addiction or are kleptomaniacs. There are all kinds of problems and addictions and difficulties and experiences of this kind that are wrong. But you should try to work with that person to learn to control that problem."

He also said—to be fair to the majority leader—"You still love that person and you should not try to mistreat them or treat them as outcasts. You should try to show them a way to deal with that." That was the beginning of the quote. I do not want to take anything out of context.

Mr. President, I am concerned about calling homosexuality a sin, comparing it to the problems of alcoholism or other diseases. I am concerned because of the medical evidence. I am concerned because I think that in many ways this statement takes us back quite a ways from where we are.

We do not bash each other here; and there is civility here. That is what I like best. So let me just simply say, the majority leader is entitled to his view and he is entitled to his vote. But I am concerned. I have been on the floor of the Senate week after week talking about the nomination of James Hormel. I really believe that, given this statement by the majority leader, and given other statements that have been made, the U.S. Senate would be better off if we bring this nomination to the floor.

It was literally back in November of last year, November 4, 1997, that Mr. Hormel was voted out of the Senate Foreign Relations Committee by a 16-2 vote. There have been holds on the nomination. We ought to bring it to the floor so that we can have an honest discussion. The majority leader is entitled to his opinion and he is entitled to his vote, but the rest of us are also entitled to our opinions and we are entitled to our votes.

I think it is extremely important that this nomination be brought to the floor; that we have an honest discussion. No acrimony whatsoever, but please let us deal with this issue, and let us give Mr. Hormel the fairness that he deserves. I will not talk more about him right now. I will not talk about his very distinguished career. But I must say, given the majority leader's statements, it makes me stronger in my belief that we need to bring this nomination to the floor, and we need to have a discussion about this question.

It will be a civil discussion. It will be an honest discussion. I think the vast

majority of Senators are ready to vote for Mr. Hormel. I will have an amendment that I will put on a bill that will deal with this question, probably the first bill after the tobacco bill. But where I want to get to is to bring this nomination to the floor. Otherwise I worry about a climate that is going to become increasingly polarized, increasingly poisonous, and we do not want that to happen. We do not want that to happen.

So I am hopeful that the U.S. Senate, in a spirit of civility and honesty with one another, and honesty with Mr. James Hormel, will bring this to the floor.

I thank my colleagues for letting me also mention this matter. I yield the floor.

Mr. SESSIONS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama.

NATIONAL TOBACCO POLICY AND YOUTH SMOKING REDUCTION ACT

The Senate continued with the consideration of the bill.

Mr. SESSIONS. Mr. President, I would like to thank—

Mr. GORTON. Will the Senator yield?

Mr. SESSIONS. I will.

AMENDMENT NO. 2705, AS MODIFIED

Mr. GORTON. Mr. President, I have a modification of my amendment at the desk. And I take it that I have the right to modify the amendment.

The PRESIDING OFFICER. The Senator has that right. The amendment is so modified.

The amendment, as modified, is as follows:

At the end of the pending amendment, add the following:

SEC. LIMIT ON ATTORNEYS' FEES.

(a) FEES COVERED BY THIS SECTION.—Notwithstanding any other provision of law, or any arrangement, agreement, or contract regarding attorneys' fees, attorneys' fees for—

(1) representation of a State, political subdivision of a state, or any other entity listed in subsection (a) of Section 1407 of this Act;

(2) representation of a plaintiff or plaintiff class in the Castano Civil Actions described in subsection (9) of Section 701 of this Act;

(3) representation of a plaintiff or plaintiff class in any "tobacco claim," as that term is defined in subsection (7) of Section 701 of this Act, that is settled or otherwise finally resolved after June 15, 1998;

(4) efforts expended that in whole or in part resulted in or created a model for programs in this Act, shall be determined by this Section.

(b) ATTORNEYS' FEES.

(1) JURISDICTION.—Upon petition by any interested party, the attorneys' fees shall be determined by the last court in which the action was pending.

(2) CRITERIA.—In determining an attorney fee awarded for fees subject to this section, the court shall consider—

(A) The likelihood at the commencement of the representation that the claimant attorney would secure a favorable judgment or substantial settlement;

(B) The amount of time and labor that the claimant attorney reasonably believed at the commencement of the representation that he was likely to expend on the claim;

(C) The amount of productive time and labor that the claimant attorney actually invested in the representation as determined through an examination of contemporaneous or reconstructed time records;

(D) The obligations undertaken by the claimant attorney at the commencement of the representation including—

(i) whether the claimant attorney was obligated to proceed with the representation through its conclusion or was permitted to withdraw from the representation; and

(ii) whether the claimant attorney assumed an unconditional commitment for expenses incurred pursuant to the representation;

(E) The expenses actually incurred by the claimant attorney pursuant to the representation, including—

(i) whether those expenses were reimbursable; and

(ii) the likelihood on each occasion that expenses were advanced that the claimant attorney would secure a favorable judgment or settlement;

(F) The novelty of the legal issues before the claimant attorney and whether the legal work was innovative or modeled after the work of others or prior work of the claimant attorney;

(G) The skill required for the proper performance of the legal services rendered;

(H) The results obtained and whether those results were or are appreciably better than the results obtained by other lawyers representing comparable clients or similar claims;

(I) The reduced degree of risk borne by the claimant attorney in the representation and the increased likelihood that the claimant attorney would secure a favorable judgment or substantial settlement based on the progression of relevant developments from the 1994 Williams document disclosures through the settlement negotiations and the eventual federal legislative process;

(J) Whether this Act or related changes in State law increase the likelihood of the attorney's success;

(K) The fees paid to claimant attorneys that would be subject to this section but for the provisions of subsection (3);

(L) Such other factors as justice may require.

(3) EFFECTIVE DATE.—Notwithstanding any other provision of law, this section shall not apply to attorneys' fees actually remitted and received by an attorney before June 15, 1998.

(4) LIMITATION.—Notwithstanding any other provision of law, separate from the reimbursement of actual out-of-pocket expenses as approved by court in such action, any attorneys' fees shall not exceed a per hour rate of—

(A) \$4000 for actions filed before December 31, 1994;

(B) \$2000 for actions filed on or after December 31, 1994, but before April 1, 1997, or for efforts expended as described in subsection (a)(4) of this section which efforts are not covered by any other category in subsection (a);

(C) \$1000 for actions filed on or after April 1, 1997, but before June 15, 1998;

(D) \$500 for actions filed after June 15, 1998.

(c) SEVERABILITY.—If any provision of this section or the application of such provision to any person or circumstance is held to be unconstitutional, the remainder of this section and the application of the provisions of such to any person or circumstances shall not be affected thereby.

Mr. GORTON. I thank the Senator from Alabama.

The PRESIDING OFFICER. The Senator from Alabama.